rash attempt, regardless of consequences, to get across the track at all hazards in hopes of not being struck by a train which they knew was approaching, as would have been the case possibly had there been a clear view and unobstructed hearing. The question of negligence of plaintiff's intestate should at least be left to the jury to determine.

SALES OF PATENT RIGHTS—STATE REGULATION.—Plaintiff Riley sued to recover value of certain lands alleged to have been transferred by the plaintiff to the defendant in part payment for transfer to plaintiff of certain patent rights. Right to recover was based upon the failure of the defendant to comply with the Kansas statute, which provided, that any one selling a patent right in any county in the state would have to file with the clerk of such county an authenticated copy of letters patent together with an affidavit of the genuineness of the letters patent and as to other matters, and also provided that any written obligation given for the purchase price of a patent right should contain the words "given for a patent right." Defendant contended that such statute violated the Federal Constitution and contravened an act of Congress. *Held,* that such statute did not violate the Federal Constitution concerning the power of Congress over patents, nor the act of Congress authorizing written assignments of patents, which should be void as to subsequent purchasers unless recorded in the Patent Office. Mr. JUSTICE WHITE and Mr. JUSTICE DAY dissented. *Allen* v. *Riley* (1906), 27 Sup. Ct. Rep. 95.

The case is of importance both as involving the interesting question of the right of the states to regulate the exercise of a privilege granted exclusively by the Federal government, and as containing an authoritative decision of a question upon which the various state courts are in hopeless conflict. The property in an invention existing by virtue of a patent is a privilege granted by the federal government and it would seem to be a principle too clear for argument that the states could not annex conditions nor impose restrictions upon the exercise of such privilege. Thus it has been held that a state statute requiring a patentee to pay a state license before attempting to vend his patent right within the state, was unconsitutional and void. *Commonwealth* v. *Petty,* 96 Ky. 452; *State* v. *Butler,* 71 Tenn. 222. It is equally well established on the other hand that when, by the application of the invention, tangible property comes into existence, it in common with, and in equal measure as other personal property, becomes subject to the police power of the state. *Patterson* v. *Kentucky,* 97 U. S. 501; *Webber* v. *Virginia,* 26 L. Ed. 565, 103 U. S. 344. But no state can discriminate in its regulations concerning personal property, against patented articles. *Ozan Lumber Co.* v. *Union National Bank,* 145 Fed. 344. On the specific question involved in the principal case, viz., whether a state can regulate the transfer of patent rights within its boundaries by compelling the filing of copies, affidavits, etc., and can deprive notes, etc., given in payment of such rights of negotiability by insisting that some such words as "given for a patent right" be written thereon, the authorities are in conflict. Perhaps the numerical weight of decisions and surely the tendency of the later decisions support the holding

in the principal case. *Reeves* v. *Corning,* 51 Fed. 774; *Shires* v. *Commoner,* 120 Pa. 368; *Tod* v. *Wick Bros. & Co.,* 36 Oh. St. 370; *Breckbill* v. *Randall,* 102 Ind. 528; *Mason* v. *McLeod,* 57 Kan. 105; *Herdic* v. *Roessler,* 109 N. Y. 127; *Tilson* v. *Gatling,* 60 Ark. 114; *Haskell* v. *Jones,* 86 Pa. 173; *Wyatt* v. *Wallace,* 67 Ark. 575; *State* v. *Cook,* 107 Tenn. 499. But there are many decisions to the contrary by respectable courts and supported by cogent reasoning. *Ex parte Robinson,* 2 Biss. 309; *Castle* v. *Hutchinson,* 25 Fed. 394; *Woollen* v. *Banker,* 2 Flip. 33; *Helm* v. *Bank of Huntington,* 43 Ind. 167; *Crittenden* v. *White,* 23 Minn. 24; *State* v. *Lockwood,* 43 Wis. 403; *Wilch* v. *Phelps* (Neb.), 15 N. W. 361; *Cranson* v. *Smith,* 37 Mich. 309; *Hollida* v. *Hunt,* 70 Ill. 109. Indiana in her earlier decisions (*Helm* v. *Bank of Huntington,* 43 Ind. 167) was in conflict with the holding in the principal case, but in the later decisions her courts have swung to the other side (*Breckbill* v. *Randall,* 102 Ind. 528). The difference between the various courts on this question seems to be not so much a difference in recognition of the principles to be applied but a difference in the emphasis which upon the same set of facts the different courts lay upon either of two principles. All the courts recognize that the state cannot make regulations restrictive of federal grants and privileges, and also that the police power of the state can be legitimately exercised to protect its citizens from all sorts of fraud and imposition. The cases which support the principal holding seem to rest upon the theory that these regulations, copies, affidavits, etc., constitute a valid use of the police power to protect the citizens from the danger of fraud so often present in assignments of patents and that such restrictions, as these regulations may create in the transfer of patent rights, if any, are but incidental. The courts which hold to the contrary see very clearly that these restrictions impede in a measure, and perhaps render less easy, the vending of patent rights, a privilege given by the federal government, and regard the matter of protection to citizens from fraud as a consideration wholly incapable of redeeming the regulations from their taint of attempted restriction of a federal privilege.

TRIAL—QUESTION FOR COURT AND JURY.—In a suit on a note, a counterclaim was set up. The defendant below demanded a special verdict and prepared the interrogatories submitted to the jury. Fraud was an essential issue but no interrogatories respecting it were submitted. No objection was made to the verdict as rendered and the defendant moved for judgment on the verdict. The court below dismissed the counterclaim, finding fraudulent participation on the part of the defendant as a matter of law. *Held,* that if there was any evidence in the case sufficient to raise the question of fraud, it was a question of fact for the jury. *Paulus* v. *O'Neal* (1907), — Wis. —, 111 N. W. Rep. 333.

TIMLIN and SIEBECKER, JJ., dissenting, maintain that the defendant (1) by failing to submit or request interrogatories covering the issue of fraud, and (2) by allowing the discharge of the jury and moving for judgment on the verdict, waived his right to go before the jury on the issues not covered by the special verdict. The exact point in issue has not been raised before in